

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs August 26, 2008

**STATE OF TENNESSEE v. WAYNE PRICHARD DAVIS**

**Direct Appeal from the Criminal Court for Washington County  
Nos. 31364, 31928     Lynn W. Brown, Judge**

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**No. E2007-02888-CCA-R3-CD - Filed February 11, 2009**

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The defendant, Wayne Prichard Davis, appeals the Washington County Circuit Court's revocation of his community corrections sentence. The defendant, in two separate cases, pled guilty to the following offenses: (1) possession of cocaine for resale, a Class B felony; (2) possession of methadone for resale, a Class C felony; (3) possession of drug paraphernalia, a Class A misdemeanor; (4) reckless endangerment, a Class E felony; (5) leaving the scene of an accident, a Class A misdemeanor; and (6) failure to appear, a Class E felony. He received an effective sentence of nine years, which was to be served in the community corrections program. A violation report was filed alleging that the defendant had violated the terms of his community corrections agreement by testing positive for cocaine and absconding. Counsel was appointed, and the revocation hearing was scheduled. Prior to that time, all parties appeared before the court for what they believed to be a hearing regarding the defendant's medical condition. No witnesses were presented with regard to revocation, no proof was admitted, and the defendant was not placed under oath. However, in response to questioning by the court, the defendant admitted that he had failed to report as directed. Immediately thereafter, the court revoked the defendant's community corrections sentence and ordered incarceration. On appeal, the defendant argues that the trial court improperly conducted the revocation hearing without counsel and without giving the defendant the opportunity to present witnesses and documentary evidence. Following review of the record as a whole, we conclude that the defendant was not afforded a proper revocation hearing. As such, the judgment is reversed, and the case is remanded with instruction to the trial court to conduct a revocation hearing in accordance with the dictates of due process.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Reversed and  
Remanded**

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J.C. McLIN, JJ., joined.

Robert Y. Oaks, District Public Defender, and William L. Francisco, Assistant Public Defender, for the appellant, Wayne Prichard Davis.

Robert E. Cooper, Jr., Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General; Anthony Wade Clark, District Attorney General; and Cristel D. Ledford, Assistant District Attorney General, for the appellee, State of Tennessee.

## **OPINION**

### **Procedural History**

In case number 31364, a Washington County grand jury returned a six-count indictment charging the defendant with possession of cocaine for resale, possession of methadone for resale, possession of drug paraphernalia, felony reckless endangerment, leaving the scene of an accident, and driving without a license. The defendant failed to report to court as ordered, and a subsequent presentment was issued in case number 31928 charging him with failure to appear. The defendant pled guilty to all charges except the driving without a license, which was dismissed. He was subsequently sentenced to an effective nine-year sentence, which the trial court ordered to be served in the community corrections program.

Approximately one month after being placed on community corrections, a violation report was issued alleging that the defendant had violated the terms of his agreement by testing positive for cocaine, by changing residences without notification, and by failing to report as instructed. The trial court entered an order revoking the defendant's community corrections sentence but reinstated him to the program.

On July 17, 2007, a second violation warrant was issued alleging that the defendant had tested positive for cocaine and absconded from the program by failing to report. The defendant was arrested and appeared before the trial court on October 9, 2007, at which time counsel was appointed to represent the defendant. At that time, the revocation hearing was set for December 11, 2007. However, a hearing was held on November 16, 2007, at which the following occurred:

THE COURT:	Who else do you have?
COURT OFFICER:	[The defendant], 75 and 76.
COURT OFFICER:	He was added. He's the one we talked to Major Downs about.
THE COURT:	I didn't get a docket with him. My docket stopped at 74. Major Downs wants him on the docket.
[DEFENSE COUNSEL]:	That's what I just learned this morning, Judge.
THE COURT:	[The defendant] is in 31364, and 31928.
[STATE]:	Your Honor, we don't have a - - can we get - - we don't have a file.
THE COURT:	He is on violation status from Community Corrections. Why did - - why does the jail want . . .
COURT CLERK:	Apparently, he was sick and . . .
[DEFENDANT]:	I have lung cancer.

[DEFENSE COUNSEL]: They've discovered a - - a spot on his lung, Judge. I've had an opportunity to speak with [the defendant] this morning. And he was originally scheduled before the court on December 11th. I have not had a chance to look at his file, but, this morning just the opportunity to speak with [the defendant].

THE COURT: Well, I mean we gave him the last chance.

[DEFENSE COUNSEL]: He . . .

THE COURT: He went to the Lighthouse, which is one of our last chance drug programs, and tested positive for cocaine there, is the allegation.

[DEFENSE COUNSEL]: And - - and he - - it's his understanding there were quite a few false positives that have come back, and this - - and his, I don't - - like I said, I don't know without the file.

THE COURT: Well, the second violation alleges that he was ordered to be at the Community Corrections' office on June the 27th. On June 27th he was told to come in on June 28th. He didn't call, report, never came back. What does he have to say about that?

[DEFENDANT]: That's true. I did. 'Cause I went back to the rehab and they told me that I was violated. And I've been in jail for about seven months, and in rehab for six. We'd just done the twenty-four weeks of it, and we were three days from graduating when all this took place. And I went home, and I was at home, and I spent the time with my family till they picked me up. I've got a fourteen year old son and I needed to explain to him what was going on.

THE COURT: A nine year sentence. He admits that he just quit going, absconded. Community Corrections is revoked. There's no increase. Prepare an order that he be transported to prison. . . .

A written order was entered by the trial court that same day which revoked the defendant's placement in community corrections and ordered that the sentence be served in confinement. The defendant has now filed timely notice of appeal.

### **Analysis**

On appeal, the defendant contends that the trial court erred by revoking his community corrections sentence "without counsel and without giving [the defendant] the opportunity to present witnesses and documentary evidence." While acknowledging that appointed counsel was present

at the November hearing, the defendant contends that counsel was unprepared and had not even met with him, as all parties involved assumed that the purpose of the hearing was only to discuss the defendant's medical condition. Moreover, he contends that no one knew to have witnesses or documentary evidence to present to the trial court on that date. He asserts that "[d]ue to the surprise of appearing before the trial court nearly one month before his scheduled revocation/sentencing hearing, [the defendant] was denied his right to counsel and [to] present witnesses and documentary evidence as required by the 6th Amendment to the U.S. Constitution and Article I, Section 9 of the Tennessee Constitution."

A trial court may revoke a community corrections sentence upon finding by a preponderance of the evidence that the defendant has violated a condition of that sentence. *State v. Harkins*, 811 S.W.2d 79, 82-83 (Tenn. 1991); *see also* T.C.A. §§ 40-36-106(e)(3), 40-35-311 (2006). Revocation of a community corrections sentence is subject to an abuse of discretion standard of review rather than a *de novo* standard. *Harkins*, 811 S.W.2d at 82. Discretion is abused only if the record contains no substantial evidence to support the trial court's conclusion that a violation has occurred. *Id.*

Community corrections revocation, like a probation revocation, is commonly predicated upon a showing of a violation of the conditions of the program. *State v. Michael Harlan Byrd*, No. 01C01-9609-CC-00411 (Tenn. Crim. App., at Nashville, May 1, 1998). Community corrections and probation revocations are not stages of a criminal prosecution, though they do result in a loss of liberty. *Gagnon v. Scarpelli*, 411 U.S. 778, 782, 93 S. Ct. 1756, 1759-60 (1973). While a defendant who has been granted probation or community corrections has only a conditional liberty interest, that conditional interest "must be protected by due process." *State v. Merriweather*, 34 S.W.3d 881, 884 (Tenn. Crim. App. 2000) (citations omitted); *see Scarpelli*, 411 U.S. at 781-82, 93 S. Ct. at 1759-60; *Morrissey v. Brewer*, 408 U.S. 471, 481-89, 92 S. Ct. 2593, 2600-04 (1972). Accordingly, a defendant facing the revocation of probation or community corrections is entitled to the "minimum requirements of due process," which the Supreme Court in *Scarpelli* and *Morrissey* identified as including: (1) written notice of the claimed violation(s) of probation; (2) disclosure to the probationer of evidence against him; (3) the opportunity to be heard in person and to present witnesses and documentary evidence; (4) the right to confront and cross-examine adverse witnesses (unless good cause is shown for not allowing confrontation); (5) a neutral and detached hearing body, members of which need not be judicial officers or lawyers; and (6) a written statement by the fact finder regarding the evidence relied upon and the reasons for revoking probation. *Scarpelli*, 411 U.S. at 786, 93 S. Ct. at 1761-62, *Morrissey*, 408 U.S. at 489, 92 S. Ct. at 2604. The burden falls upon the State to prove the alleged violation by a preponderance of the evidence. *Byrd*, No. 01C01-9609-CC-00411.

In arguing that the trial court correctly revoked the defendant's community corrections sentence, the State asserts that the law of *Scarpelli* and *Morrissey* is not implicated upon the facts of this case. In support of its argument, the State relies upon case law which holds that if a defendant admits a violation at the revocation hearing, the trial court is not required to proceed further before finding a violation. *See Black v. State*, 546 S.W.2d 828, 831 (Tenn. Crim. App. 1976) (finding that the appellant could "take no comfort" from *Morrissey v. Brewer* or *Gagnon v. Scarpelli* when he

admitted his violation at a probation revocation hearing); *State v. James Otis Butler*, No. W2006-01300-CCA-R3-CD (Tenn. Crim. App., at Jackson, Dec. 28, 2006) (once trial court was informed that the appellant admitted to the facts constituting the violation, the trial court was not required to proceed further); *State v. Jaquece Fitzgerald*, No. M2004-02441-CCA-R3-CD (Tenn. Crim. App., at Nashville, June 8, 2005) (when defendant admits violation at a revocation hearing, the process ends and no due process violation occurs when the trial court refused to hear additional evidence). We agree with the State that if a defendant admits a violation at a revocation hearing, the law does not require the trial court to allow the defendant to present more evidence at that point.

However, based upon our review of the record, the cases relied upon by the State are factually distinguishable from the instant case. In all the cases relied upon by the State, an actual scheduled revocation hearing was conducted and proof was presented. In the instant case, the parties arrived for a hearing which they believed to be about the medical condition of the defendant, as the revocation hearing was scheduled for one month later. It appears from the colloquy in the record that neither the State nor the defense was prepared for a revocation hearing, as the State did not even have a file. No evidence was admitted into the record, though the trial did apparently view the violation report. While the record establishes that the defendant did admit that he violated his agreement by not reporting, it is of significant importance that this was in response to a direct question from the trial court itself and that the defendant was not under oath at the time. We are simply unable to conclude that the defendant's due process rights were protected upon these facts. He was denied the opportunity to be heard or to present witnesses and documentary evidence. Accordingly, the revocation of community corrections is reversed, and the case is remanded to the trial court with instruction to conduct a revocation hearing in compliance with the dictates of due process.

### CONCLUSION

Based upon the foregoing, the Washington County Circuit Court's judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

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JOHN EVERETT WILLIAMS, JUDGE